IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH

FAO No.397 of 1988

Date of Decision: 30.08.2006

Parkash Singh and others

Appellants

versus

Himachal Road Transport Corporation and others

Respondents

CORAM:- **HON'BLE MR. JUSTICE JASBIR SINGH**

Present: Shri Karminder Singh, Advocate for the appellants
Shri Deepal Suri, Advocate

Jasbir Singh, J. (Oral)

Appellants are legal heirs of deceased Smt.Chint Kaur, who died in a motor accident on 27.5.1987. Their application, to claim compensation, was dismissed by the Motor Accident Claims Tribunal, Ropar (in short the Tribunal), vide judgment dated 26.2.1988, against which they have filed this appeal.

Factum of accident is not in dispute. The controversy is as to whether driver of the offending vehicle was negligent in causing the accident or not. The Tribunal has given a specific finding that accident had occurred due to sudden appearance of the deceased on the road from behind a stationary bus. The Tribunal, after analyzing evidence on record, has observed thus:-

> *"6. The accident is not much in dispute. According to the claimants, respondent No.3 was driving the bus on his wrong side and had hit Chint Kaur deceased who was present on her*

correct side of the road whereas according to the respondents, she had suddenly emerged from in front of a stationary bus ahead of the bus involved in the accident and respondent No.3 too made every effort to save that lady and took his bus towards wrong hand side but the lady hit near the rear side of the bus and received injuries because of her own negligence. Claimants have produced only Karamjit Singh as the eye witness of the accident whereas the respondents besides driver Akbar Ali have also produced Madan Gopal conductor who claims to be present near the driver at the time of accident as he was busy in issuing the tickets. Akbar Ali respondent has no doubt admitted that he had taken the bus to his right hand side to avoid hitting the lady who had come suddenly from in front of the bus already standing there i.e. from the left hand side of his bus. Karamjit Singh one of the claimants PW2 has, however, denied if any bus was standing on the bus stop of village Behrampur Zimidara ahead of the offending bus or if the deceased had emerged from behind that bus suddenly and was hit by the on coming bus driven by respondent No.3. The road at the scene of accident admittedly is wide enough and is about 30 feet wide as stated in cross-examination by Akbar Ali respondent which would mean that two vehicles side by side can easily pass on that road. The bus driven by Akbar Ali admittedly was coming from Sangrur and was heading for Nalagrah and there appears to be no reason for the driver to have taken his bus on his wrong side and to the extent of "Kacha" portion knowing fully well that he was passing through a bus stop where passengers were present on both sides of the road. It appears that there was some obstruction on the left side of the road ahead of the bus driven by Akbar Ali which required him to take his bus towards the right hand side of the road which impliedly supports the plea of respondent Akbar Ali and R.W.2 Madan Gopal that a private bus was standing in the bus stop and some passengers were alighting from the same and as such Akbar Ali respondent had slowed down the speed of the bus and had blown the horn.

Admittedly village Behrampur Zimidara is on the left hand side while coming from Kurali to Ropar from which village Chint Kaur had come to take a bus and according to the case of the claimants, she was present on the opposite side of the road from the side of said village as she was to board a bus for the opposite direction i.e. towards Kurali side which means that she was present on the right hand side of the road when Akbar Ali respondent was driving the bus from Kurali towards Ropar. Karamjit Singh stated that he was also present at the same place where Chint Kaur was present. However, he did not receive any injury in the accident whereas Chint Kaur admittedly received the injuries. In the circumstances the version of accident as stated by respondent Akbar Ali appears to be most probable and the bald statement of Karamjit Singh does not appear to describe the accident how it took place. It has been invariably seen that at the village bus stops, the passengers do cross the road from front and behind of the bus and in a hurry to board the bus they forget about the on coming traffic on the road itself and, thus, get involved in the accident. The present case appears to be one such like accident. The claimants have not produced the Investigating Officer or the copy of the site plan which would show the actual place of impact or where the blood stained earth was lying or the place where the bus stopped after the accident so as to corroborate the allegations of Karamjit Singh. In the circumstances the accident cannot be attributed to the rashness or negligence in driving of the bus by respondent Akbar Ali. This issue is decided accordingly against the claimants."

This Court feels that the opinion expressed by the Tribunal is perfectly justified. It has come on record in the evidence of PW2 Karamjit Singh son of the deceased, that one independent witness, namely, Mala, was present at the bus stand but no attempt has been made to examine the said witness. Furthermore, as per Ex.P1 (post mortem report), no crush injuries

were found on the body of the deceased. No doubt, FIR is available on record, but no attempt has been made to summon the investigating officer and also to bring on record the site plan prepared by the investigating agency. As against evidence led by the claimants, the testimonies of DW1 and DW2 are trust worthy and were rightly believed by the Court below. Otherwise also, it is apparent from the records that age of the claimants was between 23 to 29 years, all three sons were in service and the daughter was married when the accident had taken place. The deceased was in receipt of pension after the death of her husband. None of the claimant have said that they were dependent upon the deceased.

In view of facts mentioned above, no case is made out for interference.

Dismissed.

August 30, 2006 **(Jasbir Singh)**
gk **Judge**